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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231, ON THE DATE INDICATED BELOW.

W. Paul P. Kianatani
ATTORNEY FOR APPLICANT

April 23, 2001
DATE OF SIGNATURE

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TC 2800 HALL ROOM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application	Dr. Donald G. Russell)	
of:)	Group Art Unit: 2882
)	
on:	AN INTERMEDIATE)	Examiner: Craig E. Church
	DENSITY MARKER AND A)	
	METHOD USING SUCH A)	
	MARKER FOR)	
	RADIOGRAPHIC)	
	EXAMINATION)	
)	
Serial No.:	09/372,835)	
)	
Filed On:	August 12, 1999)	(Docket No. 054630.0005)

Commissioner for Patents
Washington, D.C. 20231

DECLARATION OF DENISE ZIELANSKI

I, Denise Zielanski, hereby declare and state as follows:

1. I am employed by Beekley Corporation, the assignee of this patent application. As a result of my employment by Beekley Corporation, I am familiar with the radiographic markers manufactured and sold by Beekley Corporation covered by this patent application, the marketing and sales of these markers, Beekley's sales records in connection with these markers, and the commercial success of these markers.

2. Beekley's radiographic markers covered by this patent application are identified by Beekley as "Light Image" markers because they are made of a partially radiolucent, partially radiopaque material that generates a radiographic image of the tissue having the shadow of the marker superimposed thereon, with the anatomical detail present in the tissue clearly visible through the radiographic shadow projected by the marker (hereinafter referred to as "Light Image" markers). Conventional radiopaque markers, on the other hand, absorb substantially all incident radiation and therefore do not allow imaging of any anatomical detail present in the tissue underlying the marker.

3. Beekley began selling the Light Image markers in 1996 and has enjoyed considerable and ever-increasing commercial success in connection with these markers. Beekley has sold the following three types of Light Image markers: Beekley's A-SPOTS® markers are illustrated in Exhibit A and are used for marking palpable masses, Beekley's O-SPOTS® markers are illustrated in Exhibit B and are used for marking moles, and Beekley's S-SPOTS® markers are illustrated in Exhibit C and are used for marking scars. Prior to introducing the Light Image O-SPOTS and S-SPOTS markers, Beekley had manufactured and sold corresponding radiopaque markers. The only essential difference between these corresponding radiopaque and Light Image markers is that the Light Image markers are made of a material that allows imaging of the anatomical detail present in the tissue such that it is clearly visible through the radiographic shadow projected by the marker, as described above and claimed in this patent application.

4. Beekley's sales of Light Image markers since 1997 have been approximately as follows:

<u>Product</u>	<u>Number of Boxes</u>	<u>Number of Markers</u>	<u>Approximate Retail Dollar Value</u>
Light Image A-SPOTS	19,600	2,352,000	\$1,038,800
Light Image O-SPOTS	77,347	4,486,126	\$4,099,391
Light Image S-SPOTS	48,267	3,317,355	\$2,558,151
Totals:	145,214	10,155,481	\$7,696,342

The dollar values indicated are approximate retail dollar values based on an estimated average price of \$53.00 per box. As indicated in Exhibits A through C, Beekley's price per box varies depending upon the number of boxes ordered. The estimated average price is about mid-way between the highest and lowest prices per box. Beekley's exact revenues on these sales are higher than indicated. Each box of S-SPOTS markers includes approximately 327 cm of marker, and therefore the number of markers per box is based on an estimate of approximately 65 patient applications per box at 5 cm per application.

5. As indicated below, Beekley has enjoyed continually increasing sales per year since introducing the Light Image markers of this patent application.

<u>Year</u>	<u>Total Number Of Light Image Boxes</u>
1997	16,669
1998	32,974
1999	36,634
2000	42,001
2001 (first quarter only)	8936

6. Beekley's sales of the Light Image markers as outlined above constitute a significant and ever-increasing portion of the overall market for mammographic imaging markers. In the United States, approximately 26 million mammograms are performed annually. Of these, approximately 14% or 3.64 million present with raised moles. Approximately 70% of practitioners routinely mark raised moles. In the year 2000, Beekley sold approximately 1.3 million O-SPOTS Light Image markers. Accordingly, the Light Image O-SPOTS markers have rapidly achieved greater than approximately 50% market share. Thus, a substantial portion of the practitioners that are marking are using the Beekley Light Image markers, and we believe they are doing so because of the "Light Image" feature of these markers, i.e., the ability to allow imaging of the anatomical detail present in the underlying tissue to be clearly visible through the radiographic shadow projected by the marker.

7. Beekley's commercial success with the Light Image markers is not the result of extensive advertising. In fact, the Light Image markers of the invention are not the type of product that can be sold by advertising hyperbole, and Beekley has conducted minimal advertising in connection with these markers. Rather, the purchasers of these Light Image markers are sophisticated medical practitioners that purchase the markers based on their performance in medical imaging. Beekley's promotion of the Light Image markers has been almost entirely through business-to-business telemarketing. Beekley provides potential customers (medical practitioners) with samples of the Light Image markers, the practitioners try the samples, and typically then continue to regularly use and order the Light Image markers from Beekley based on the performance of the markers.

8. Beekley's Light Image markers are more expensive than substantially all competing markers, and therefore the commercial success of Beekley's Light Image markers is not due to aggressive pricing or discounts.

9. The commercial success of Beekley's Light Image markers is directly attributable to the "light image" features as described above, i.e., the ability of these markers to allow imaging of the anatomical detail present in the tissue such that it is clearly visible through the radiographic shadow projected by the marker. The primary characteristic which sets these Light Image markers apart from other competing markers is this ability to allow imaging of the anatomical detail present in the underlying tissue to be clearly visible through the radiographic shadow projected by the marker. Otherwise, Beekley's Light Image O-SPOTS and S-SPOTS markers are substantially the same as the corresponding radiopaque markers. For each of these types of markers, Beekley sells substantially more Light Image markers than corresponding radiopaque markers. For example, in the year 2000, Beekley sold approximately 1.8 million O-SPOTS markers, and of these, approximately 1.3 million were Light Image O-SPOTS markers. Based upon our communications with our customers, this feature of the Light Image marker is a key factor in motivating them to purchase the Light Image markers. In fact, many of Beekley's Light Image marker customers previously refused to purchase and use skin markers because conventional radiopaque markers would block out anatomical detail present in the tissue underlying the marker. We understand that these customers only started using skin markers when Beekley's Light Image markers became commercially available, and such customers now regularly use the Light Image markers in their medical practices.

10. I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and, further, that these



statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application and the patent issuing thereon.

Dated: _____

4/23/01

A handwritten signature in cursive script that reads "Denise Zielanski".

Denise Zielanski

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